
By: **Senator Colburn**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Management of Institutional Funds - Appropriations from Endowment**
3 **Funds**

4 FOR the purpose of authorizing a governing board of an institutional fund to make
5 certain appropriations from an endowment fund under certain circumstances;
6 providing for certain procedures, standards, and remedies concerning a certain
7 application and proceeding in a circuit court to authorize certain appropriations
8 from an endowment fund; providing for the application of this Act; and generally
9 relating to certain appropriations from an endowment fund under certain
10 circumstances.

11 BY repealing and reenacting, without amendments,
12 Article - Estates and Trusts
13 Section 15-401
14 Annotated Code of Maryland
15 (2001 Replacement Volume and 2002 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article - Estates and Trusts
18 Section 15-402 and 15-407
19 Annotated Code of Maryland
20 (2001 Replacement Volume and 2002 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Estates and Trusts**

24 15-401.

25 (a) In this subtitle the following words or phrases have the meanings
26 indicated.

1 (b) "Endowment fund" means an institutional fund, or any part of it not
2 wholly expendable by the institution on a current basis under the terms of the
3 applicable gift instrument.

4 (c) "Gift instrument" means a will, deed, grant, conveyance, agreement,
5 memorandum, writing, or other governing document, including the terms of any
6 institutional solicitations from which an institutional fund results, under which
7 property is transferred to or held by an institution as an institutional fund.

8 (d) "Governing board" means the body responsible for the management of an
9 institution or of an institutional fund.

10 (e) "Historic dollar value" means the aggregate fair value in dollars of (1) an
11 endowment fund at the time it became an endowment fund, (2) each subsequent
12 donation to the fund at the time it is made, and (3) each accumulation made pursuant
13 to a direction in the applicable gift instrument at the time the accumulation is added
14 to the fund. The determination of historic dollar value made in good faith by the
15 institution is conclusive.

16 (f) "Institutional" means an incorporated or unincorporated organization
17 organized and operated exclusively for educational, religious, charitable, or other
18 eleemosynary purposes, or a governmental organization to the extent that it holds
19 funds exclusively for any of these purposes.

20 (g) "Institutional fund" means a fund held by an institution for its exclusive
21 use, benefit, or purposes but does not include (1) a fund held for an institution by a
22 trustee that is not an institution or (2) a fund in which a beneficiary that is not an
23 institution has an interest, other than possible rights that could arise upon violation
24 or failure of the purposes of the fund.

25 15-402.

26 (A) The governing board may appropriate for expenditure for the uses and
27 purposes for which an endowment fund is established so much of the net appreciation,
28 realized and unrealized, in the fair value of the assets of an endowment fund over the
29 historic dollar value of the fund as is prudent under the standard established by §
30 15-406 OF THIS SUBTITLE.

31 (B) This section does not limit the authority of the governing board to expend
32 funds as permitted under other law, the terms of the applicable gift instrument, or the
33 charter of the institution.

34 15-407.

35 (a) With the written consent of the donor, the governing board may [release,]:

36 (1) RELEASE, in whole or in part, a restriction imposed by the applicable
37 gift instrument on the use or investment of an institutional fund; OR

1 (2) APPROPRIATE FOR EXPENDITURE, IN WHOLE OR IN PART, THE
2 HISTORIC DOLLAR VALUE OF AN ENDOWMENT FUND.

3 (b) (1) If written consent of the donor cannot be obtained by reason of [his]
4 THE DONOR'S death, disability, unavailability, or impossibility of identification, the
5 governing board may apply in the name of the institution to the circuit court for the
6 county where the office of the governing board is located, for [release]:

7 (I) RELEASE of a restriction imposed by the applicable gift
8 instrument on the use or investment of an institutional fund; OR

9 (II) SUBJECT TO THE PROVISIONS OF THIS SECTION, AN ORDER
10 THAT AUTHORIZES A GOVERNING BOARD TO APPROPRIATE ANNUALLY A FIXED
11 PERCENTAGE OF THE HISTORIC DOLLAR VALUE OF AN ENDOWMENT FUND.

12 (2) The Attorney General shall be notified of the application and given
13 an opportunity to be heard.

14 (3) (I) If the court finds that the restriction is obsolete, inappropriate,
15 or impracticable, it may by order release the restriction in whole or in part.

16 (II) A release OR ORDER under this subsection may not change an
17 endowment fund to a fund that is not an endowment fund.

18 (c) A release OR ORDER under this section may not allow a fund to be used for
19 purposes other than the educational, religious, charitable, or other eleemosynary
20 purposes of the institution affected.

21 (d) This section does not limit the application of the doctrine of cy pres.

22 (E) (1) THIS SUBSECTION APPLIES TO AN APPLICATION BY A GOVERNING
23 BOARD FOR AN ORDER BY A CIRCUIT COURT TO AUTHORIZE THE GOVERNING BOARD
24 TO APPROPRIATE ANNUALLY A FIXED PERCENTAGE OF THE HISTORIC DOLLAR
25 VALUE OF AN ENDOWMENT FUND.

26 (2) A CIRCUIT COURT MAY PASS AN ORDER THAT AUTHORIZES THE
27 GOVERNING BOARD TO APPROPRIATE ANNUALLY A FIXED PERCENTAGE OF NOT
28 MORE THAN 4% OF THE HISTORIC DOLLAR VALUE OF AN ENDOWMENT FUND IF THE
29 COURT FINDS THAT:

30 (I) THE GOVERNING BOARD MEETS EACH REQUIREMENT
31 CONCERNING THE INVESTMENT AND MANAGEMENT OF THE ENDOWMENT FUND
32 PROVIDED UNDER THIS SUBTITLE OR OTHERWISE BY LAW;

33 (II) THE ORDER WILL ENABLE THE GOVERNING BOARD TO
34 IMPLEMENT TO A GREATER EXTENT THE INTENT OF THE GIFT INSTRUMENT; AND

35 (III) THE GOVERNING BOARD COMPLIES WITH THE NOTICE
36 REQUIREMENTS OF THIS SUBSECTION.

1 (3) IN CONSIDERING AN APPLICATION FOR AN ORDER UNDER THIS
2 SUBSECTION, A CIRCUIT COURT SHALL CONSIDER ALL FACTORS RELEVANT TO THE
3 ENDOWMENT FUND, INCLUDING THE FOLLOWING FACTORS TO THE EXTENT THEY
4 ARE RELEVANT:

5 (I) THE NATURE, PURPOSE, AND EXPECTED DURATION OF THE
6 ENDOWMENT FUND;

7 (II) THE INTENT OF THE DONOR OF THE PROPERTY SUBJECT TO
8 THE GIFT INSTRUMENT;

9 (III) THE IDENTITY AND THE CIRCUMSTANCES OF EACH
10 INTERESTED PERSON UNDER THE GIFT INSTRUMENT;

11 (IV) THE NEED FOR LIQUIDITY, REGULARITY OF INCOME, AND
12 APPRECIATION OF CAPITAL;

13 (V) THE ASSETS HELD IN THE ENDOWMENT FUND AND:

14 1. THE EXTENT TO WHICH THE ASSETS CONSIST OF
15 FINANCIAL ASSETS, TANGIBLE OR INTANGIBLE PERSONAL PROPERTY, OR REAL
16 PROPERTY;

17 2. THE EXTENT TO WHICH AN ASSET IS USED FOR THE
18 PURPOSES OF THE ENDOWMENT FUND; AND

19 3. WHETHER AN ASSET WAS ACQUIRED BY THE GOVERNING
20 BOARD OR RECEIVED FROM THE DONOR UNDER THE GIFT INSTRUMENT;

21 (VI) WHETHER AND TO WHAT EXTENT THE TERMS OF THE GIFT
22 INSTRUMENT EXPRESSLY AUTHORIZE OR RESTRICT AN APPROPRIATION BY THE
23 GOVERNING BOARD FROM THE HISTORIC DOLLAR VALUE OR APPRECIATION OF THE
24 ENDOWMENT FUND AND THE EXTENT TO WHICH THE GOVERNING BOARD HAS
25 EXERCISED A POWER TO APPROPRIATE AN EXPENDITURE FROM THE HISTORIC
26 DOLLAR VALUE OR APPRECIATION OF THE ENDOWMENT FUND;

27 (VII) THE ACTUAL AND ANTICIPATED EFFECT OF ECONOMIC
28 CONDITIONS ON THE HISTORIC DOLLAR VALUE AND APPRECIATION OF THE
29 ENDOWMENT FUND AND THE EFFECTS OF INFLATION AND DEFLATION; AND

30 (VIII) THE ANTICIPATED TAX CONSEQUENCES OF AN APPROPRIATION
31 OF AN EXPENDITURE FROM THE HISTORIC DOLLAR VALUE.

32 (4) IF A CIRCUIT COURT PASSES AN ORDER UNDER THIS SUBSECTION,
33 THE FOLLOWING APPLY:

34 (I) THE AMOUNT OF THE HISTORIC DOLLAR VALUE THAT MAY BE
35 APPROPRIATED BY THE GOVERNING BOARD MAY NOT BE MORE THAN THE
36 PERCENTAGE OF THE HISTORIC DOLLAR VALUE AUTHORIZED UNDER THE COURT
37 ORDER, AVERAGED OVER THE LESSER OF:

1 1. THE PRECEDING 3 YEARS; OR
2 2. THE PERIOD THAT THE ENDOWMENT FUND HAS BEEN IN
3 EXISTENCE;

4 (II) A PROVISION IN THE GIFT INSTRUMENT THAT DIRECTS OR
5 AUTHORIZES THE GOVERNING BOARD TO APPROPRIATE A PORTION OF THE
6 HISTORIC DOLLAR VALUE MAY NOT BE AFFECTED BY THE ORDER; AND

7 (III) AN APPROPRIATION AUTHORIZED UNDER THIS SUBSECTION
8 SHALL BE PAID FIRST FROM THE NET APPRECIATION OF THE ENDOWMENT FUND
9 AND THEN FROM THE HISTORIC DOLLAR VALUE.

10 (5) THE GOVERNING BOARD SHALL DETERMINE:

11 (I) THE EFFECT OF OTHER PAYMENTS FROM OR CONTRIBUTIONS
12 TO THE ENDOWMENT FUND ON THE HISTORIC DOLLAR VALUE;

13 (II) HOW FREQUENTLY TO VALUE NONLIQUID ASSETS IN AN
14 ENDOWMENT FUND AND WHETHER TO ESTIMATE THEIR VALUE; AND

15 (III) WHETHER TO OMIT FROM THE CALCULATIONS ENDOWMENT
16 FUND PROPERTY THAT IS OCCUPIED OR POSSESSED BY AN INTERESTED PERSON
17 UNDER THE GIFT INSTRUMENT.

18 (6) A CIRCUIT COURT MAY NOT PASS AN ORDER UNDER THIS
19 SUBSECTION TO THE EXTENT THAT AN APPROPRIATION FROM THE HISTORIC
20 DOLLAR VALUE WOULD CHANGE THE AMOUNT PAYABLE AS A FIXED ANNUITY OR
21 FIXED FRACTION OF THE ENDOWMENT FUND ASSETS.

22 (7) A COURT ORDER UNDER THIS SUBSECTION MAY NOT REQUIRE A
23 GOVERNING BOARD TO APPROPRIATE AN EXPENDITURE FROM THE HISTORIC
24 DOLLAR VALUE.

25 (8) (I) A GOVERNING BOARD SHALL GIVE NOTICE OF ITS APPLICATION
26 FOR AN ORDER UNDER THIS SUBSECTION TO EACH INTERESTED PERSON UNDER
27 THE APPLICABLE GIFT INSTRUMENT AS REQUIRED UNDER THIS PARAGRAPH.

28 (II) THE GOVERNING BOARD SHALL MAIL THE NOTICE TO EACH
29 INTERESTED PERSON KNOWN TO THE GOVERNING BOARD WHO DOES NOT CONSENT
30 IN WRITING TO THE ORDER.

31 (III) THE NOTICE SHALL STATE THAT IT IS GIVEN IN ACCORDANCE
32 WITH THIS SUBSECTION AND SHALL STATE THE FOLLOWING:

33 1. THE NAME AND ADDRESS OF THE GOVERNING BOARD,
34 TOGETHER WITH THE NAME AND TELEPHONE NUMBER OF A PERSON WHO MAY BE
35 CONTACTED FOR ADDITIONAL INFORMATION;

1 2. A DESCRIPTION OF THE APPLICATION FILED BY THE
2 GOVERNING BOARD FOR AUTHORIZATION TO APPROPRIATE ONE OR MORE ANNUAL
3 EXPENDITURES FROM THE HISTORIC DOLLAR VALUE;

4 3. THE TIME WITHIN WHICH WRITTEN CONSENT TO THE
5 APPLICATION MAY BE GIVEN TO THE GOVERNING BOARD, WHICH SHALL BE AT
6 LEAST 30 DAYS AFTER THE MAILING OF THE PROPOSED ORDER; AND

7 4. THE DATE ON OR AFTER WHICH A COURT ORDER
8 CONCERNING THE APPLICATION MAY BE PASSED, WHICH SHALL BE AFTER THE END
9 OF THE TIME WITHIN WHICH CONSENT TO THE APPLICATION MAY BE GIVEN TO THE
10 GOVERNING BOARD.

11 (9) IF AN INTERESTED PERSON UNDER THE GIFT INSTRUMENT DOES
12 NOT CONSENT TO THE APPLICATION FOR A COURT ORDER, THE INTERESTED PERSON
13 MAY FILE AN ANSWER IN THE CIRCUIT COURT IN WHICH THE APPLICATION IS FILED
14 AND ENTER AN APPEARANCE AS A PARTY IN A PROCEEDING ON THE APPLICATION.

15 (10) IN A PROCEEDING ON AN APPLICATION UNDER THIS SUBSECTION,
16 THE SOLE REMEDY IS TO DIRECT, DENY, OR REVISE THE AUTHORITY REQUESTED IN
17 THE APPLICATION FOR THE COURT ORDER.

18 (11) AN ACTION TAKEN OR NOT TAKEN IN ACCORDANCE WITH THE
19 PROVISIONS OF THIS SUBSECTION SHALL BE BINDING ON A GOVERNING BOARD, ALL
20 INTERESTED PERSONS, AND ANY OTHER PERSON WHO HAS A PRESENT OR FUTURE
21 INTEREST IN THE ENDOWMENT FUND, VESTED OR CONTINGENT, INCLUDING ANY
22 UNBORN OR UNASCERTAINED PERSON, AND THE GOVERNING BOARD IS NOT LIABLE
23 TO ANY PERSON FOR THAT ACTION TAKEN OR NOT TAKEN.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies to each
25 endowment fund existing on or after the effective date of this Act.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2003.